

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 94-05**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Whether quarries and asphalt plants qualify as manufacturers when 51% or more of their revenues are attributable to sales to another legal entity for consumption off the premises.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

A quarry and asphalt plant attributes more than 51% of its revenues to sales to another legal entity for consumption off the premises. The separate legal entity and the quarry and asphalt plant have a common owner.

QUESTIONS

- (1) Do sales of manufactured tangible personal property to outside companies by quarries and asphalt plants amounting to 51% or more of those entities revenues qualify those entities as manufacturers (assuming all other industrial machinery definitions are met)?
- (2) Do sales to an outside company qualify as “resale for consumption off the premises” even if there is common ownership of the manufacturer and the purchaser?

RULINGS

- (1) Yes.
- (2) Yes.

ANALYSIS

Industrial machinery is defined and exempted under T.C.A. Sections 67-6-206 and 67-6-102(12). The exemption applies only to manufacturers, and a manufacturer is defined as “one whose principal business is fabricating or processing tangible personal property for resale”. T.C.A. Sections 67-6-206(b)(2). If the principal business is the manufacturer or personal property for resale, then the exemption applies.

To qualify as resold, the product must be sold to a third party. Use of a product by the same company does not constitute a sale. However, the third party purchaser can be a separate legal entity owned by the same party as the manufacturer.

In determining a company’s principal business, the Department of Revenue relies on the 51% rule. Under the Rule, if 51% or more of a business’ revenues are derived from a particular activity, then that is its principal business.

The Tennessee Supreme Court approved the “51% Rule” in *Tennessee Farmer’s Cooperative v. Jackson*, 736 S.W.2d 87 (Tenn. 1987). The Court confirmed that the 51% Rule is calculated on the dollar amount sales. Further, the Court concluded that each location of a business is examined separately when applying the rule.

The reduced statutory rate for water and energy fuel comes under the same statute as industrial machinery and is governed by the same standard as that for industrial machinery. T.C.A. Sections 67-6-206(b) and (b)(1).

The issues discussed above are similar to some of the issues involved in current litigation. *Rogers Group, Inc. v. Huddleston*, Davidson Chancery No. 92-2972-II. Although Rogers Group did involve an asphalt plant, there were not two different legal entities involved. The Department’s positions stated herein will remain in force until a court of final determination directs a different interpretation or a legislative change directs different treatment.

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